

FILED

JAN 03 2020

Clerk, U S District Court
District Of Montana
Billings

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

MARK KRAMLICH,

Plaintiff,

vs.

YELLOWSTONE COUNTY
ELEMENTARY SCHOOL DISTRICT
#2,

Defendant.

CV 18-167-BLG-SPW

**ORDER ADOPTING
MAGISTRATE'S FINDINGS
AND
RECOMMENDATIONS**

The United States Magistrate Judge filed Findings and Recommendations on December 14, 2019. (Doc. 13.) The Magistrate recommended the Court grant the Defendant's motion to dismiss, deny the Plaintiff's motion for an extension of time to file, dismiss the complaint with prejudice, and certify that any appeal taken from the Court's disposition would not be taken in good faith. (Doc. 13 at 11.)

Pursuant to 28 U.S.C. § 636(b)(1), parties are required to file written objections within 14 days of the filing of the Magistrate's Findings and Recommendations. Fed. R. Civ. P. 6(d) allows three additional days after the period would otherwise expire when, as here, a party is served via mail. No objections were filed. When neither party objects, this Court reviews the Magistrate's Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus.*

Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

After reviewing the Findings and Recommendations, this Court does not find that the Magistrate committed clear error. The Plaintiff failed to file the instant lawsuit within the 90-day limitations period after receiving the Equal Employment Opportunity Commission’s right-to-sue letter. The Plaintiff is not entitled to equitable tolling, as his failure to mail his complaint was not the conduct of a reasonably prudent person. Finally, there are no factual or legal disputes of any substance, and an appeal would not be taken in good faith. Accordingly,


IT IS ORDERED that the proposed Findings and Recommendations entered by the United States Magistrate Judge (Doc. 13) are **ADOPTED IN FULL**.

IT IS FURTHER ORDERED:

1. The Defendant’s Motion to Dismiss for Failure to State a Claim (Doc. 6) is **GRANTED**.
2. The Plaintiff’s Motion for Extension of Time to File (Doc. 9) is **DENIED**.
3. The Complaint (Doc. 2) is **DISMISSED WITH PREJUDICE**.
4. The Clerk of Court shall enter judgment in favor of the Defendant.

5. The Court certifies, pursuant to Federal Rule of Appellate Procedure 24(a)(4)(B), that any appeal from this disposition would not be taken in good faith.

DATED this 3rd day of January, 2020.


SUSAN P. WATTERS
United States District Judge